

## **APPENDIX C**

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### **AQMD PUBLIC NUISANCE INVESTIGATION POLICIES & PROCEDURES**

## South Coast Air Quality Management District Policies & Procedures

**Subject: Public Nuisance Investigation**

**Date: May 1, 1989**

**No. C-1**

### 1.0 POLICY

The District will investigate public nuisance complaints and issue Notices of Violation for public nuisances. This document identifies the District's authority in these areas and provides guidelines for gathering evidence to substantiate public nuisance complaints.

### 2.0 GENERAL

An inspector usually conducts a public nuisance investigation in response to complaints from the public. To prosecute a public nuisance violation successfully, the chief prosecutor's office needs documented evidence that the activity or condition is in violation of Health and Safety Code Section 41700. The District is both the investigative and enforcement agency for public nuisance complaints.

### 3.0 HEALTH AND SAFETY CODE SECTIONS 41700 AND 41705

The complete texts of Sections 41700 and 41705 are given below. In substance, the text of Rule 402 is a restatement of

Sections 41700 and 41705.

41700. Except as otherwise provided in Section 41705, no person shall discharge from any source whatsoever such quantities of air contaminants or other material which can cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or which endanger the comfort, repose, health, or safety of any such persons or the public, or which cause, or have a natural tendency to cause, injury or damage to business or property.

41705. Section 41700 shall not apply to odors emanating from agricultural operations necessary for the growing of crops or the raising of fowl or animals.

### 4.0 PUBLIC NUISANCE INVESTIGATION GUIDELINES

The inspector will conduct a public nuisance complaint investigation in accordance with the following guidelines:

- a. The inspector will check the complainants' premises or adjacent areas for the emissions

complained of (examples: odors, dust fallout, paint overspray). This may require driving around in the area surrounding the source. The inspector will write in the Violation Notice Report that this was done. Additionally, the inspector will note in the report whether or not another potential source of the emission was found.

1. If evidence of emissions is found, the inspector will track the emissions upwind from the complainants by visual or olfactory observations.
  2. If no evidence of emissions is found, the inspector will ask the complainants for a description of the emissions and for other information which may help to determine their source.
- b. After identifying the emissions and source, the inspector, using the process of elimination, will check all possible areas surrounding the alleged or known source to exclude any other potential source.

The inspector will inspect the source premises and establish the specific equipment or process responsible for the emissions. This involves inspecting all vents, stacks, and openings where the emissions occur or may occur, obtaining

samples of emissions if possible, and checking for Permits Operate.

- c. The inspector will list all persons contacted at the source premises by full name and title (Mr., Mrs., Ms.), and will also include phone number, responsibility in the incident, and information to which each person can testify if called by the prosecutor as a witness.

The inspector may ask the complainants whether they know of other persons in the neighborhood who have complained of the emissions. If so, the inspector will request the complainants to tell these other persons to contact the District.

- d. After establishing the source, the inspector will contact all complainants and, if possible, obtain samples of emissions from the complainants; premises. In more complex cases, the inspector may require a source test, air monitoring, and perhaps assistance from local health officials to establish health endangerment or natural tendency to cause injury or damage to business or property.
- e. If a violation is indicated, the inspector will obtain the completed complaint forms from the complainants.

## 5.0 DISTRIBUTING AND COLLECTING COMPLAINT FORMS

- a. Whenever possible, the investigating inspector will personally distribute a complaint form to each complainant. The inspector's report must include the time, place, and date such forms were distributed and collected.
- b. The inspector will interview each complainant either at the time of the complaint or when the declaration form is collected.
- c. Inspectors who assist the investigating inspection to distribute or collect nuisance complaint forms must comply with the requirements of steps a and b above.

## 6.0 COMPLETING THE COMPLAINT FORM

- a. The complainant must list a residence location on the complaint form (attached), not a post office box number. The business address and telephone number should indicate where the complainant can be contacted from 8:00 a.m. to 4:30 p.m. Monday through Friday.
- b. The complainant must complete items 1 through 8 on the form. If the information is not known or is not applicable, the complainant will

indicate "not known" or "not applicable" in the space provided.

- c. The inspector will check that the signature is the complainant's legal name. If the answer to item 8 is "No," the complainant must complete the declaration on the reverse side, using printing rather than hand writing.
- d. The inspector will review the form and complete the "APCD USE ONLY" block.

## 7.0 REQUIREMENTS FOR ISSUING A PUBLIC NUISANCE VIOLATION NOTICE

- a. Before a public nuisance violation notice is issued, the investigating inspector must observe, identify, or otherwise establish evidence of the emissions complained of at or near the complainants' location.
- b. The investigating inspector must establish the source of the emissions and eliminate other potential sources.
- c. A multiple complaint condition must be documented. As a rule, District Legal Counsel prefers that it be based on a minimum of six (6) to ten (10) complainants from separate households. However, special circumstances

may dictate that a Notice of Violation be issued if supported by fewer complainants. For example, if property damage or a potential health hazard exists, a husband and wife living at the same residence may be considered as separate complainants. A Notice should not be issued only on the basis of complaints from members of a single family living at one location.

- d. The investigating inspector should complete the Notice of Violation form. In some instances another inspector may serve the notice.
- e. The inspector who establishes the public nuisance violation will write all of the supporting documentation, clearly demonstrating that each element of the violation has been met. Any inspectors who assist in gathering evidence or interviewing witnesses will prepare separate reports, coordinated by the lead inspector on the violation.